

people coming across the sea, and we were faced with the horrible decision of what we do with them—people who were seeking freedom, people who were seeking the opportunity to simply provide food for their families, and we had to deal with that.

So Haiti, because of its geography, is very important to the United States, will continue to be important, and I intend to come to the floor sometime within the next week to detail what I found on the trips I have made to Haiti and some of the specific recommendations I have. But because of the constraints of time, and I know there are other Members who have expressed a desire to speak, I will, Mr. President, yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. First, while my friend from Ohio is here, I thank him for yielding before. I appreciate that.

USE OF FBI BACKGROUND INVESTIGATION SUMMARIES

Mr. LEVIN. Mr. President, I want to take a few moments this afternoon to set the record straight on an important point concerning the use of FBI background investigations in the consideration of the executive branch nominees by the Senate.

A number of inaccurate comments have been made about the handling of FBI files in connection with the pending nomination of Tony Lake to be Director of Central Intelligence. Some Senators are calling for access to the complete files which the FBI used to prepare the summaries that were provided to the White House and the Congress. The Senators cite former Senator Tower's nomination to be Secretary of Defense as a precedent for requesting those so-called complete files.

For example, a February 17, 1997, letter to the majority leader, signed by 16 Senators, only three of whom were Members of the Senate at the time the Tower nomination was considered, and none of whom were then members of the Armed Services Committee, states the following:

As you know, when former U.S. Senator John Tower was nominated for Secretary of Defense, his complete FBI file was placed in a secure room of the Capitol for Members of the Senate to read and evaluate. Given the clear precedent and the critical nature of the position of Director of Central Intelligence, this is the procedure which we believe should be followed in the case of Mr. Lake.

The fact is, Mr. President, that neither the Armed Services Committee nor the full Senate ever had access to the raw investigative files used by the FBI to compile its summary of the

background investigation of Senator Tower. The Armed Services Committee and all Senators had access only to the FBI summary of its investigation of Senator Tower to be Secretary of Defense.

I understand that the summary of the FBI's background investigation of Tony Lake has already been provided to the chairman and vice chairman of the Intelligence Committee, just as the summary of the FBI's background investigation of Senator Tower was provided in the Armed Services Committee in 1989.

A little background is useful here on the process of FBI background investigations of executive branch nominees. Prior to the submission of a nomination to the Senate, the FBI conducts a background investigation of the nominee for the purpose of providing the President with information about the suitability of a prospective nominee. The report of the investigation is submitted to the counsel to the President who is responsible for preparing appropriate advice to the President.

The FBI background material provided to the Armed Services Committee in connection with nominations includes only the FBI summary of its interviews. If the committee determines that additional information is necessary, a request for this information is made of the White House. If necessary, the FBI investigates further, and additional summaries are provided to the committee. The underlying investigative materials are not submitted to the committee, and they never have been. I repeat that. The underlying investigative materials, the so-called raw investigative materials, are not submitted to the Armed Services Committee and they never have been, including in the case of Senator Tower when his nomination was before us to be Secretary of Defense.

The standard practice before the Armed Services Committee has been that the summary of the FBI investigation is read only by the chairman and the ranking minority member of the committee or their Senator-designee from the members of the committee. These summaries can be extraordinarily personal and confidential, and, for that reason, the executive branch is not allowed staff access generally to those FBI summaries.

A February 10, 1989, letter from President Bush's White House counsel, Boyden Gray, to the Senate majority leader described the "terms and conditions under which summaries of FBI background investigations on Presidential nominees have been made available to Senators since 1981." This is what then-White House counsel Boyden Gray said to the Senate majority leader.

The FBI summary is hand-carried by an attorney in this office to the Senator who reviews the file with the White House attorney. When the Senator has finished reading the summary, it is hand-carried back to the White House.

That same practice was followed throughout the Bush administration and the first term of the Clinton administration.

Access to FBI summaries was expanded for the committee's consideration of the nomination of former Senator Tower to be Secretary of Defense in 1989. For the committee's consideration of that nomination, Senator Nunn and Senator WARNER, the chairman and ranking member of the committee at that time, felt that it was important that all Senators on the committee have access to the FBI summary of its background investigation of Senator Tower and that a limited number of committee staff also have access to those summaries to prepare the committee report on the nomination.

After lengthy discussions and negotiations with President Bush's counsel, Boyden Gray, Senators Nunn and WARNER and Mr. Gray reached a written agreement on the terms of access to the FBI summary of its investigation of Senator Tower, which allowed all members of the Armed Services Committee and a very limited number of committee staff to have access to the nine chapters of the FBI summary. The summary was put in room S407 here in the Capitol, along with summaries of the summary which were prepared by the committee staff, to make it easier for the members of the committee to review those summaries.

Mr. President, the agreement between Senator Nunn, Senator WARNER, and Mr. Gray makes it very clear that what the Armed Services Committee had access to was—and here I am quoting from the access agreement—"the Federal Bureau of Investigation's summary of its background investigation of Senator John Tower."

And the agreement here between Senators Nunn and WARNER and Mr. Gray went on to inventory the material which was provided to the committee as follows:

The FBI summary consists of the following parts:

This is the inventory agreed upon relative to Senator Tower's nomination.

The FBI summary consists of the following parts: (1) summary memorandum (undated [but which was, in fact, dated December 13, 1988]); (2) summary memorandum (December 23, 1988); (3) summary memorandum [which was also] (undated [in this agreement but which was January 6, 1989]); (4) summary memorandum (January 13, 1989); (5) summary memorandum (undated [but which was, in fact, January 25, 1989]); (6) summary memorandum [dated] (February 8, 1989); and (7) summary of the ongoing investigation not yet completed by the FBI.

Now what that quote is from is the agreement between Senators Nunn and WARNER and Boyden Gray, the then-White House counsel.

Mr. President, I wonder how much time I have left?

The PRESIDING OFFICER. The Chair observes that the Senator's time has expired.

Mr. LEVIN. If there is nobody else seeking recognition, I ask unanimous consent to have 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. I thank the Chair.

So then I observe, Mr. President, that the quote which I just shared with this body is from the agreement, and every single item on that inventory is a summary document.

Two additional FBI summaries were added to the seven listed in the original agreement before the Senate finally voted on the Tower nomination a month later. These FBI summaries, which were eventually placed in S-407 for review by all Senators, were the only FBI materials received by the Armed Services Committee.

As Senator Nunn stated on the Senate floor when he opened the debate on the Tower nomination—and this probably is the most succinct place where Senator Nunn stated this on the Senate floor—

What we have in S-407 is the summary of interviews the FBI conducted. They prepare the summary. We do not see nor do we have the underlying interviews.

That is stated about as succinctly and directly as you can by the then-chairman of the Armed Services Committee.

So, in short, the committee did not have access to any raw investigative files or interview transcripts, nor did the Senate. What we had were the nine chapters of the FBI summary of its investigation.

Following the committee's action on the Tower nomination, Senators Mitchell and Dole reached an agreement with the Bush administration that all Senators would have access to the same FBI summary of the background investigation of Senator Tower that was made available to the members of the Armed Services Committee. In other words, after the Armed Services Committee voted, then the agreement between Senators Mitchell and Dole was that the full Senate would have access to those same summaries that the committee Senators had access to.

So the fact is, Mr. President, that in considering the nomination of Senator Tower to be Secretary of Defense, the Armed Services Committee—and eventually all Senators—had access to the FBI summary of its background investigation of Senator Tower, no more and no less. We did not have access to any of the raw investigative material that the FBI used to prepare those summaries.

Mr. President, the Senate has had the nomination of Tony Lake to be Director of Central Intelligence for 2 months. And some Senators have questions about Mr. Lake's suitability for the position. Those questions should be raised with the nominee in the hearing next week so that he can respond, and Senators can then reach their own judgments about his suitability for this important position.

But we should not act on any misunderstanding as to what the precedents are relative to raw investigatory materials. And in dealing with the Lake nomination, which I am glad to see is now scheduled for a hearing, I think it is important that Senators realize that the precedents here relative to executive nominees are such that we do not have access to those materials because they contain so much rumor, so much inaccurate information that we rely on the FBI to go through all that raw material and give us the summary reports that then we rely on, and then if we need or desire additional information, we make that request of the FBI and of the Justice Department.

There is a larger issue at stake here also, Mr. President, and that is the growing intrusiveness of the nomination and confirmation process. Make no mistake about it: if the executive branch agrees to provide raw FBI files to the Intelligence Committee, a new precedent will be set for future nominations to executive branch positions. The FBI summaries contain the most personal, private, and sensitive details of an individual's life. Some of these details have no bearing on an individual's suitability for office.

As Mr. Gray stated in his February 14, 1989, letter to the Armed Services Committee, even the material included in the summary of an FBI background investigation is so sensitive that their disclosure could jeopardize "the privacy interests of [the nominee] and others, the confidentiality of FBI sources, the FBI's ability to conduct background investigations, and our ability to recruit qualified candidates for positions of governmental service."

It is already difficult to convince talented people to serve in government. If people realize that every rumor or allegation that the FBI dredges up or that every off-hand comment or statement that someone says about a nominee in an interview is subject to being read by 100 Senators and selected staff—and possible leaks to the media—it will be even harder to get the kind of people all of us want to serve in confirmed positions in the executive branch.

I ask unanimous consent, Mr. President, that the February 10, 1989, letter from Mr. Gray to the Senate majority leader, the February 14, 1989, agreement on the terms of access to the FBI summary of its investigation of Senator Tower, and the February 14, 1989, letter from Mr. Gray transmitting that agreement to Senator Nunn, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, DC, February 10, 1989.
Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR MR. MAJORITY LEADER: As a follow-up to our meeting of January 27, 1989, I am sending you a precise description of the terms and conditions under which summaries of FBI background investigations on

Presidential nominees have been made available to Senators since 1981. That description is set forth below.

At the request of the White House, the FBI conducts a full-field investigation of a candidate for Presidential nomination. A summary of the results of this investigation is reviewed by the Counsel to the President prior to a final Presidential decision to nominate the individual in question. Once the nomination is forwarded to the Senate, that summary is made available for review by the Chairman and Ranking Minority Member of the Committee considering the nomination (and the Majority and Minority Leaders if they desire). With the approval of the Chairman and Ranking Minority Member, other Senators on the Committee are given an opportunity to review the summary.

The FBI summary is hand-carried by an attorney in this office to the Senator who reviews the file with the White House attorney. When the Senator has finished reading the summary, it is hand-carried back to the White House. (Within the White House, access to the FBI summary is limited to members of the White House Counsel's office, the Chief of Staff, and the President.)

In the event the Chairman and Ranking Minority Member of the Committee believe there are issues that have not been adequately addressed in the FBI summary, the Counsel to the President may request the FBI to conduct further investigation. The summary of that additional investigation is provided to the White House counsel who then makes it available to the Chairman and Ranking Minority Member on the same terms and conditions as the original FBI summary.

The procedures outlined above are necessary to protect the FBI's investigatory process as well as the privacy interests of the nominee and the other individuals who agree to be interviewed by the FBI. Since the FBI relies on the willingness of people to provide information in a confidential manner, access to this information is limited. For the same reasons, members of this office and Senators have historically refused to comment publicly on the contents of the FBI summary.

As we discussed, this practice enables the Senate to utilize information prepared by the FBI for the White House in the execution of its Constitutional advice and consent responsibilities. Further, it is my understanding (as evidenced in the enclosed letter from former Deputy Counsel to the President Richard A. Hauser, Section IV of the enclosed old "Presidential Appointee's Handbook" (which has been used since at least 1986) and Appendix A of the revised "Presidential Appointee's Handbook") that this practice was consistently followed by Senate Committees in their consideration of Presidential nominees between 1981 through mid 1986.* Accordingly, with your concurrence, it is my intention to continue this practice throughout the Bush Administration.

Sincerely,

C. BOYDEN GRAY,
Counsel to the President.

TERMS OF ACCESS TO THE FBI SUMMARY OF ITS INVESTIGATION OF JOHN TOWER (NOMINATION AS SECRETARY OF DEFENSE)

The Counsel to the President has agreed to make available to the Senate Armed Services Committee (SASC) four copies of the Federal Bureau of Investigation's summary of its background investigation of Senator

*The one exception to this rule was the Senate Judiciary Committee, which was subject to a separate agreement because judgeships are lifetime appointments.

John Tower. (The FBI summary consists of the following parts: (1) summary memorandum (undated [December 13, 1988]); (2) summary memorandum (December 23, 1988); (3) summary memorandum (undated [January 6, 1989]); (4) summary memorandum (January 13, 1989); (5) summary memorandum (undated [January 25, 1989]); (6) summary memorandum (February 8, 1989); and (7) summary of the ongoing investigation not yet completed by the FBI.) Since these documents are the property of the Executive branch and involve extremely sensitive information, they will be made available only through the Office of Senate Security located at Room S-407, United States Capitol. Only Senators on the SASC and not more than 6 designated SASC staff members (as determined and designated by the Chairman, SASC, and the Ranking Minority Member) and designated members of the Executive branch shall be granted access to these documents at this location. The names of the designated staff members shall be provided, in writing, to the Counsel to the President prior to their being given access to the documents; and the names of the Executive branch officials shall be provided, in writing, to the Chairman, SASC, prior to their access at this location. A record of all persons using these documents in Room S-407 shall be maintained.

Access to these documents will be limited to Senators on the SASC and the 6 designated SASC staff members. These documents may be reviewed in Room S-407 only; no additional copies may be made; and no documents may be removed. Any notes derived from these documents shall be treated as sensitive and shall be used only in connection with the Committee's Executive Session deliberations (and vote). At the conclusion of the Committee's deliberations (and vote), any notes shall be destroyed or considered part of the FBI documents for purposes of this Agreement.

Within 14 days of the conclusion of the Committee's deliberations (and vote) on Senator Tower's nomination, these documents will be returned to the Counsel to the President unless another agreement has been reached with the Senate leadership.

SAM NUNN,
*Chairman, Senate
Armed Services Com-
mittee.*

JOHN WARNER,
*Ranking Minority
Member.*

C. BOYDEN GRAY,
*Counsel to the Presi-
dent.*

THE WHITE HOUSE,
Washington, DC, February 14, 1989.

Hon. SAM NUNN,
*Chairman, Committee on Armed Services, U.S.
Senate, Washington, DC.*

DEAR MR. CHAIRMAN: With respect to our conversation last Friday regarding access by the Senate Armed Services Committee to the Federal Bureau of Investigation's (FBI) summary of its background investigation of Senator Tower in connection with his nomination as Secretary of Defense, I am gratified that we have now reached an understanding on the way in which we will proceed.

I believe the fact that all of the Committee's subsequent deliberations involving the FBI summary on Senator Tower's nomination will occur during Executive Session only, that this nomination has significant national security implications, and the unique nature of the allegations concerning Senator Tower warrant a one-time-only exception to the procedures governing access to FBI background investigations by Committee members.

The documents we will provide are extremely sensitive. Their disclosure could jeopardize the privacy interests of Senator Tower and others, the confidentiality of FBI sources, the FBI's ability to conduct background investigations, and our ability to recruit qualified candidates for positions of governmental service. Therefore, I am pleased that we have agreed on ground rules for Committee access that suit our purposes and yours. The enclosed Terms of Access sets forth the procedures for access, custody, storage, and return to the Executive branch of the FBI background summary. With this understanding, we are prepared to deliver copies of these documents to your Committee immediately.

I believe that this understanding will make it possible for the Committee to proceed expeditiously on this nomination once the FBI has completed its investigation.

Sincerely,

C. BOYDEN GRAY,
Counsel to the President.

Mr. LEVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

WAIVING CERTAIN PROVISIONS OF THE TRADE ACT RELATING TO THE APPOINTMENT OF THE U.S. TRADE REPRESENTATIVE

The PRESIDING OFFICER (Mr. GREGG). Under the previous order, the clerk will report Senate Joint Resolution 5.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 5) waiving certain provisions of the Trade Act of 1974 relating to the appointment of the United States Trade Representative.

The Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. Who yields time?

Mr. MCCAIN. Mr. President, I believe under the unanimous-consent agreement the amendment by Senator HOLLINGS is in order at this time.

The PRESIDING OFFICER. The Senator is correct. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, as I understand, the pending business is that I send to the desk an amendment to the waiver amendment of the committee; is that at the desk?

The PRESIDING OFFICER. The Chair would observe that the desk does not have the amendment.

Mr. MCCAIN. The waiver amendment is the pending business. What is not at the desk is the amendment of the Senator from South Carolina to the waiver.

The PRESIDING OFFICER. The observation by the Senator from Arizona is correct.

AMENDMENT NO. 19

(Purpose: To require Congressional approval before any international trade agreement that has the effect of amending or repealing statutory law of the United States law can be implemented in the United States) The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS] proposes an amendment numbered 19.

On page 2, after line 8, insert the following:
**SEC. 2. CONGRESSIONAL APPROVAL OF CERTAIN
TRADE AGREEMENTS REQUIRED.**

No international trade agreement which would in effect amend or repeal statutory law of the United States law may be implemented by or in the United States until the agreement is approved by the Congress.

The PRESIDING OFFICER. The Chair announces there are 3 hours equally divided on the amendment by the Senator from South Carolina.

The Senator from South Carolina.

Mr. HOLLINGS. I thank the distinguished Chair. Mr. President, I ask that the distinguished senior Senator from North Carolina [Mr. HELMS] be added also as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, the amendment that has just been read is so simple, so fundamental. I am hearkening to our new Members of the U.S. Senate, just in January, a few weeks ago, "I hereby pledge to support and defend the Constitution of the United States."

This is constitutional language, that no international agreement that would, in effect, amend or repeal statutory law can be implemented until approved by the Congress. Under the Constitution, article 1, section 8, it is the duty of the Congress to regulate foreign commerce—not the executive branch; not the executive branch.

Obviously, to really change the law you would have to have three readings in the House and three readings in the Senate and signed by the President. The fact that this amendment, which I tried to make as clearcut and as principled as it possibly could be, where there would be no confusion, has been so vigorously opposed by the White House and certain ones in Congress that there is no doubt in my mind that with respect to foreign trade, with respect to global competition, we are in the hands of the Philistines, we are in the hands of the multinationals. Rather than the Congress controlling the multinationals and international trade, the multinationals, by this initiative, are controlling the Congress.

What is the initiative? Well, they could not find any language to amend my amendment. They could not find anybody to really object to it. What they did do, then, was to say, well, we will get some letters written—incidentally, by people who had nothing to do with this particular part of the telecommunications bill—and the comments were that Mr. ARCHER of the